

HOUSE BILL No. 1024

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-30-16.

Synopsis: Protection of private real property rights. Provides that if an action of a state or local governmental entity taken after June 30, 2014, to enforce or otherwise apply a law or other regulation: (1) creates an inordinate burden on, restriction on, or limitation of real property rights on an existing use of private real property or a vested right to a specific use of private real property; and (2) the action does not constitute a taking of private real property under the Constitution of the State of Indiana or the Constitution of the United States; the property owner is entitled to relief, including compensation for the actual loss to the fair market value of the real property, by bringing an action in the circuit court that has jurisdiction in the county in which the real property is located. Establishes the procedures the private real property owner must follow to: (1) bring and maintain the action; and (2) receive compensation.

Effective: July 1, 2014.

Neese

January 7, 2014, read first time and referred to Committee on Judiciary.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1024

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-30-16 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]:

4 **Chapter 16. Protection of Private Real Property Rights**

5 **Sec. 1. (a) This chapter applies to laws of the state and political**
6 **subdivisions of the state that:**

7 **(1) do not amount to a taking of private real property under:**

8 **(A) Article 1, Section 21 of the Constitution of the State of**
9 **Indiana; or**

10 **(B) the Fifth Amendment to the Constitution of the United**
11 **States; and**

12 **(2) otherwise create an inordinate burden on, restriction on,**
13 **or limitation of private real property rights.**

14 **(b) The following do not apply to a cause of action brought**
15 **under this chapter:**

16 **(1) IC 34-13-1 (Contract Claims Against the State).**



(2) IC 34-13-3 (Tort Claims Against Governmental Entities and Public Employees).

Sec. 2. For purposes of this chapter, the existence of a vested right is determined by applying applicable:

- (1) principles of equitable estoppel or substantive due process under the common law of the state; or
- (2) provisions of the Indiana Code.

Sec. 3. (a) As used in this chapter, "action of a governmental entity" means a specific action of a governmental entity that:

- (1) is taken after June 30, 2014; and
- (2) affects real property.

(b) The term includes an action concerning the issuance of a permit by a governmental entity.

Sec. 4. As used in this chapter, "existing use" means:

- (1) an actual, present use or activity on real property, including periods of inactivity, that is:

- (A) normally associated with; or
- (B) incidental to;

the nature or type of use or activity; or

- (2) activity or reasonably foreseeable, nonspeculative land uses that:

- (A) are suitable for the affected real property and compatible with adjacent land uses; and
- (B) have created an existing fair market value in the real property greater than the fair market value of the actual, present use or activity on the real property.

Sec. 5. (a) As used in this chapter, "governmental entity" means:

- (1) the state;
- (2) an agency of the state;
- (3) a political subdivision of the state; or
- (4) any other entity that exercises state or local governmental authority.

(b) The term does not include:

- (1) the United States or an agency of the United States; or
- (2) a governmental entity described in subsection (a) when the governmental entity exercises the powers of:
 - (A) the United States; or
 - (B) an agency of the United States;
 through a formal delegation of federal authority.

Sec. 6. (a) As used in this chapter, "inordinate burden" means the result of an action of one (1) or more governmental entities that



1 directly restricts or limits the use of real property so that:

2 (1) the property owner is permanently unable to attain:

3 (A) the reasonable investment backed expectation for the
4 existing use of the real property; or

5 (B) a vested right to a specific use of the real property with
6 respect to the real property as a whole; or

7 (2) the property owner is left with existing or vested uses that
8 are so unreasonable that the property owner permanently
9 bears a disproportionate share of a burden imposed for the
10 good of the public that should instead be borne by the public
11 at large.

12 "Inordinately burdening" has a corresponding meaning.

13 (b) The term does not include:

14 (1) temporary impacts to real property;

15 (2) impacts to real property caused by governmental
16 abatement, prohibition, prevention, or remediation of a:

17 (A) public nuisance; or

18 (B) noxious use of private property; or

19 (3) impacts to real property caused by an action of a
20 governmental entity taken to grant relief to a property owner
21 under this chapter.

22 Sec. 7. (a) As used in this chapter, "property owner" means the
23 person who holds legal title to real property.

24 (b) The term does not include a governmental entity.

25 Sec. 8. As used in this chapter, "real property" means:

26 (1) land; and

27 (2) any appurtenances and improvements to the land.

28 Sec. 9. (a) If an action of a governmental entity enforcing or
29 otherwise applying a law or other regulation:

30 (1) creates an inordinate burden on, restriction on, or
31 limitation of real property rights on:

32 (A) an existing use of private real property; or

33 (B) a vested right to a specific use of private real property;
34 and

35 (2) the action does not constitute a taking as described in
36 section 1(a)(1) of this chapter;

37 the property owner is entitled to relief, including compensation for
38 the actual loss to the fair market value of the real property caused
39 by the action of the governmental entity, by bringing an action
40 under this chapter in the circuit court that has jurisdiction in the
41 county in which the real property is located.

42 (b) An action may not be brought under this chapter if:



(1) there is another provision of the Indiana Code that provides the property owner with the relief described under subsection (a); or

(2) the action is brought more than one (1) year after the date the law or other regulation is first enforced or otherwise applied by the governmental entity as described in subsection (a).

(c) For purposes of subsection (b)(2), a law or other regulation is first enforced or otherwise applied as follows:

(1) After the enactment of the law or other regulation, if the impact of the law or other regulation on real property is clear and unequivocal, a governmental entity that enforces or otherwise applies the law or other regulation may mail a written notice:

(A) to the latest address of the property owner as shown on the property tax records of the county in which the real property is located; and

(B) that informs the property owner that:

(i) the law or other regulation affects the property owner's existing property rights; and

(ii) the property owner has one (1) year from the date the property owner receives the notice to pursue any rights described under this chapter.

A law or other regulation is first enforced or otherwise applied to real property under this subdivision on the date the property owner receives the notice described in this subdivision.

(2) If subdivision (1) does not apply, the law or other regulation is first enforced or otherwise applied to the real property when there is a formal denial of a written request by the property owner to:

(A) develop all or part of the real property; or

(B) obtain a variance for the real property.

(d) If a property owner seeks relief from the governmental action through any other available administrative or judicial proceedings, the time for bringing an action under this chapter is tolled until the conclusion of the proceedings.

Sec. 10. (a) Not less than one hundred fifty (150) days before bringing an action under this chapter against a governmental entity, a property owner must submit:

(1) a claim in writing that seeks relief under this chapter; and

(2) a bona fide, valid appraisal that:



1 (A) supports the claim; and
 2 (B) demonstrates the loss in fair market value to the real
 3 property;
 4 to the head of the governmental entity.

5 (b) If:

6 (1) a governmental action is the culmination of a process that
 7 involves more than one (1) governmental entity; or
 8 (2) a complete resolution of all relevant issues requires the
 9 participation of more than one (1) governmental entity;
 10 the property owner shall present the claim under subsection (a) to
 11 the head of each governmental entity involved or required to
 12 participate.

13 Sec. 11. (a) A governmental entity shall provide written notice
 14 of a claim submitted to the governmental entity under section 10
 15 of this chapter to all:

- 16 (1) parties to any administrative action that may have caused
 17 the claim to be submitted; and
 18 (2) owners of real property contiguous to the property
 19 owner's real property at the addresses listed on the most
 20 recent county tax rolls.

21 (b) Not more than fifteen (15) days after a claim is presented to
 22 a governmental entity, the governmental entity shall:

- 23 (1) report the claim in writing to the attorney general; and
 24 (2) provide the attorney general with the name of and contact
 25 information for an employee of the governmental entity from
 26 whom additional information may be obtained about the
 27 claim during the pendency of:
 28 (A) the claim process; and
 29 (B) any subsequent judicial action concerning the claim.

30 Sec. 12. (a) After a property owner submits a claim under
 31 section 10 of this chapter and before the property owner brings an
 32 action in a circuit court under this chapter, a governmental entity
 33 shall make a written settlement offer to the property owner that
 34 the governmental entity shall do one (1) or more of the following:

- 35 (1) Adjust any:
 36 (A) land development standards;
 37 (B) permit standards; or
 38 (C) other provisions;
 39 that control the development or use of the land.
 40 (2) Increase or modify the:
 41 (A) density;
 42 (B) intensity; or



- 1 (C) use;
- 2 of areas of development.
- 3 (3) Transfer developmental rights.
- 4 (4) Provide for an exchange of land.
- 5 (5) Provide for mitigation, including monetary payments,
- 6 instead of onsite mitigation.
- 7 (6) Change the location of the governmental action to the least
- 8 affected area of the real property.
- 9 (7) Provide for conditions concerning the amount of
- 10 development or use allowed.
- 11 (8) Provide a requirement that issues be addressed on a more
- 12 comprehensive basis than a single proposed use or
- 13 development.
- 14 (9) Issue:
- 15 (A) a development order;
- 16 (B) a variance;
- 17 (C) a special exception; or
- 18 (D) any other extraordinary relief.
- 19 (10) Provide for:
- 20 (A) the purchase of:
- 21 (i) the real property; or
- 22 (ii) an interest in the real property;
- 23 by an appropriate governmental entity; or
- 24 (B) the payment of compensation.
- 25 (11) Stipulate that there will not be any changes to the action
- 26 of the governmental entity on the real property.
- 27 (b) If the property owner accepts a settlement offer described in
- 28 subsection (a), the governmental entity may implement the
- 29 settlement offer by appropriate development agreement by:
- 30 (1) issuing a variance, a special exception, or any other
- 31 extraordinary relief; or
- 32 (2) another appropriate method;
- 33 subject to subsection (c).
- 34 (c) If a governmental entity enters into a settlement agreement
- 35 with the property owner under this chapter:
- 36 (1) that would have the effect of creating a modification,
- 37 variance, or special exception to the application of a rule or an
- 38 ordinance as it would otherwise apply to the real property, the
- 39 relief granted must:
- 40 (A) protect the public interest served by the rule or
- 41 ordinance at issue; and
- 42 (B) be the appropriate relief necessary to prevent the



governmental regulatory effort from inordinately burdening, restricting, or limiting private real property rights on the real property; and

(2) that would have the effect of contravening the application of a statute as it would otherwise apply to the real property, the governmental entity and the property owner shall jointly file an action in the circuit court of the county in which the real property is located for approval of the settlement agreement by the court to ensure that the relief granted:

(A) protects the public interest served by the statute; and

(B) is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening, restricting, or limiting private real property rights on the real property.

Sec. 13. (a) After a property owner submits a claim under section 10 of this chapter and before the property owner brings an action in a circuit court under this chapter, unless a settlement offer is accepted by the property owner under section 12 of this chapter, each governmental entity that is provided notice under section 10 of this chapter shall issue a written statement identifying the allowable uses to which the real property may be put. If a governmental entity fails to issue the statement, the failure to issue the statement is considered a denial for purposes of allowing a property owner to file an action in the circuit court under section 9(c)(2) of this chapter. If a written statement of allowable uses is issued, the statement is considered the last prerequisite to judicial review for the purposes of the judicial proceeding established by this chapter.

(b) If the property owner rejects the settlement offer and the statement of allowable uses of the governmental entity, the property owner may file:

(1) a claim for compensation in the circuit court, a copy of which shall be served on the head of each of the governmental entities that made a settlement offer; and

(2) a statement of allowable uses that was rejected by the property owner.

Sec. 14. (a) If an action is brought in a circuit court under this chapter, the circuit court shall determine:

(1) whether:

(A) an existing use of the real property; or

(B) a vested right to a specific use of the real property; existed; and



(2) if the existing use or vested right to a specific use existed, whether, considering the settlement offer and statement of allowable uses, the governmental entities have created an inordinate burden on, restriction on, or limitation of real property rights on the real property.

(b) If the actions of more than one (1) governmental entity are responsible for the action that imposed the inordinate burden on, restriction on, or limitation of real property rights on the real property, considering any settlement offers and statement of allowable uses, the court shall determine the percentage of responsibility for which each governmental entity is responsible with respect to the inordinate burden.

(c) A governmental entity may take an interlocutory appeal of a circuit court's determination that an action of the governmental entity has resulted in an inordinate burden on, restriction on, or limitation of real property rights on the real property. An interlocutory appeal does not automatically stay the proceedings under this chapter. However, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and reasonable attorney's fees incurred by the property owner to litigate the interlocutory appeal.

Sec. 15. (a) The circuit court shall impanel a jury to determine the total amount of compensation to be paid to the property owner for the loss in value due to the inordinate burden on, restriction on, or limitation of real property rights on the real property after:

- (1) the circuit court's determination of the percentage of responsibility of each governmental entity; and
- (2) the resolution of any interlocutory appeal.

(b) The award of compensation shall be determined by calculating the difference between:

(1) the fair market value of the real property, as it existed at the time of the governmental action, as though the property owner:

(A) had the ability to attain the reasonable investment backed expectation; or

(B) was not left with uses that are unreasonable; and

(2) the fair market value of the real property, as it existed at the time of the governmental action, as inordinately burdened, restricted, or limited considering the settlement offer together with the statement of allowable uses from the governmental



entities.

In determining the award of compensation, consideration may not be given to business damages relative to any development, activity, or use that the action of the governmental entities, considering the settlement offer together with the statement of allowable uses, has restricted, limited, or prohibited.

(c) The award of any compensation must include a reasonable award of prejudgment interest from the date the claim was submitted to the governmental entity under section 10 of this chapter.

(d) A governmental entity is not liable for compensation for an action of the governmental entity:

(1) that applies to; or

(2) for the loss in value to;

real property more than one (1) time.

Sec. 16. (a) In an action filed under this chapter, the property owner is entitled to recover reasonable costs and attorney's fees incurred by the property owner from a governmental entity according to the governmental entity's proportionate share as determined by the circuit court from the date of the filing of the circuit court action if:

(1) the property owner prevails in the action; and

(2) the court determines that the settlement offer, including the statement of allowable uses, of the governmental entity did not constitute a bona fide offer to the property owner that reasonably would have resolved the claim, based upon the knowledge available to the governmental entity and the property owner:

(A) after the date the property owner submitted the claim under section 10 of this chapter; and

(B) before the date the property owner brought the action under this chapter.

(b) In an action filed under this chapter, a governmental entity is entitled to recover reasonable costs and attorney's fees incurred by the governmental entity from the property owner as determined by the circuit court from the date of the filing of the circuit court action if:

(1) the governmental entity prevails in the action; and

(2) the court determines that the property owner did not accept a bona fide settlement offer, including the statement of allowable uses, that reasonably would have resolved the claim fairly to the property owner if the settlement offer had been



accepted by the property owner, based upon the knowledge available to the governmental entity and the property owner:

(A) after the date the property owner submitted the claim under section 10 of this chapter; and

(B) before the date the property owner brought the action under this chapter.

(c) The determination of total reasonable costs and attorney's fees under this section shall be made by the circuit court and not by the jury. Any:

(1) proposed settlement offer or proposed decision, except for the final written settlement offer or the final written statement of allowable uses; and

(2) negotiations or rejections in regard to the formulation of:

(A) the settlement offer; or

(B) the statement of allowable uses;

are inadmissible in the subsequent proceeding established by this section.

(d) Not more than fifteen (15) days after:

(1) the execution of any settlement; or

(2) the issuance of any judgment;

made under this chapter, a governmental entity shall provide a copy of the settlement or judgment to the attorney general.

Sec. 17. (a) If a governmental entity is required to compensate a property owner in an action brought under this chapter, the circuit court shall determine the form and the recipient of any rights, title, and interest in rights of use for which compensation was provided.

(b) Any:

(1) rights;

(2) title; and

(3) interest in rights of use;

received by a governmental entity under this chapter may be held, sold, or otherwise disposed of by the governmental entity.

Sec. 18. This chapter may not be construed to supersede the right of a property owner and a governmental entity to engage voluntarily in:

(1) arbitration;

(2) mediation; or

(3) another form of alternative dispute resolution;

to settle a dispute that is otherwise actionable under this chapter.

